

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Pike Run Sportsmen's LTD. Petitioner-Appellant, v. Muscatine County Board of Review, Respondent-Appellee.	ORDER Docket No. 09-70-0082 Parcel No. 009+1129400006 Docket No. 09-70-0083 Parcel No. 009+1128100010 Docket No. 09-70-0084 Parcel No. 009+1121300003
--	--

On June 22, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Pike Run Sportsmen's LTD. (Pike Run), was represented by Larry H. Thumann, Sr. The Muscatine County Board of Review designated Assistant County Attorney Eric Simonson as its legal representative, but he did not appear at hearing. Instead, County Assessor Dale L. McCrea was present and represented the Board of Review. Both submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Pike Run, the owner of property located in Orono Township, Muscatine County, Iowa, appeals from the Muscatine County Board of Review regarding its 2009 property assessments. The appeal includes three agriculturally classified parcels totaling 206.259 acres, of which 126.62 acres are in forest reserve and 79.639 are taxable acres. All of the parcels are unimproved.

Allocation of the forest reserve and taxable acres to the individual parcels are as follows:

Docket Number	Parcel Number	Total Acres	Forest Reserve Acres	Taxable Acres
09-70-0082	7011-29-400-006	13.390	6.640	6.750
09-70-0083	7011-28-100-010	152.453	114.450	38.003
09-70-0084	7011-21-300-003	40.416	5.530	34.886
	Total	206.259	126.620	79.639

The 2009 assessments for each parcel are as follows:

Docket Number	Parcel Number	Total Assessed Value	Forest Reserve Exemption	Adjusted Total Assessed Value
09-70-0082	7011-29-400-006	\$7,590	\$3,770	\$3,820
09-70-0083	7011-28-100-010	\$130,570	\$92,230	\$38,340
09-70-0084	7011-21-300-003	\$26,430	\$3,620	\$22,810
	Total	\$164,590	\$99,620	\$64,970

Pike Run filed a separate protest on all three parcels with the Muscatine County Board of Review. Each protest claimed the following grounds: that the properties are not assessable, are exempt, or misclassified under Iowa Code section 441.37(1)(c); and, that there is an error in the assessment under section 441.37(1)(d). Under the ground that the property is not assessable, Pike Run stated the soil types listed are incorrect, essentially asserting an error. Pike Run's claimed error is that water areas are not listed, or listed incorrectly.

The Board of Review denied the protests.

Pike Run then appealed to this Board on the same grounds. It again references errors in the classification of soil type and water areas noted either as the wrong size or not at all. Pike Run does not provide an opinion as to what the correct values should be. Based upon the language presented, the claim that the properties are not assessable is essentially an error claim. Accordingly, we will only consider a claim of error.

Larry H. Thumann, Sr. testified on behalf of Pike Run at the hearing. Thumann provided maps outlining and documenting the number of water acres per parcel that he asserts actually exists. He

testified that he personally boated and hiked each parcel and digitally measured the water areas. Each parcel is unique. Parcel 7011-29-400-006, has a total site size of 13.39 acres. Pike Run asserts 10.81 acres of this site is "water," compared to the 2.312 acres of water area noted on the property record card. The discrepancy in this particular parcel is due to Pike Run being unaware that it neither owns, nor is being assessed for a designated "flowing water way," which bisects this parcel. Muscatine County Assessor, Dale McCrea testified that the site was in fact bisected. This was evident on the aerial maps submitted as evidence. He was unsure of when or why the area that is not included within the parcel, but appears clearly to be a stream, was determined to be navigable. However, due to its identification as a navigable water way, it is not "owned" by any individual or entity. Rather, adjoining property owners have ownership to the shoreline only. As such, we find no error as it relates to the assessment of Parcel 7011-29-400-006.

Parcel 7011-28-100-010, is the largest of the three parcels and has a total site size of 152.453 acres. The property record card indicates it has 4.816 acres of water area. Thumann claims the actual water area consists of 12.17 acres. Thumann provided a black and white copy of an aerial photo, and outlined the areas which he believes to be water. The Board of Review provided this Board with a color copy of an aerial map, which also had an overlay of soil types including water areas (Exhibit A). In the case of this particular parcel, it is difficult to accurately discern where the water areas are on either map. Although it appears there may be areas of water that are not identified in the assessment, it is equally possible that existing identified areas would no longer be considered "water" or wetland area. Both parties agree the maps and overlays are outdated given the change of waterways which occur naturally over time. While it is reasonable to assume changes have occurred over time particularly due to flooding in the last decade, it is not possible to determine by the maps how much the water/wetland areas have increased or decreased on Parcel 7011-28-100-010. While we find Thumann honest in his testimony, given the existing maps it is not possible for this Board to clearly

verify the existence of water areas as determined by Thumann. As such, we find no error in Parcel 7011-28-100-010.

Parcel 7011-21-300-003, has a total of 40.416 acres and no water areas noted. In contradiction to Parcel 7011-28-100-010, the aerial maps provided for Parcel 7011-21-300-003, both by the Board of Review and Pike Run, clearly indicate “pond” areas, specifically in the western half of this parcel. Thumann claims a total of 9.78 acres is either a part of Pike Creek or ponds, all located within the parcel.

While McCrea has not done an on-site inspection of the subject parcels, it was not for lack of trying. He attempted to visit the site, but due to flooding in the area, was not able to gain access. McCrea testified he does believe there are clearly bodies of water located within Parcel 7011-21-300-003, but indicates he simply did not have the ability to change the soil types, noting that he was not a soil engineer. McCrea did make an effort to inspect the property when these particular parcels were protested, and we laud his willingness to recognize the concerns of the property owners.

Although McCrea was not able to inspect the sites due to events outside of his control; he does admit that due to flooding and changes which naturally occur overtime, especially around flowing waterways, new areas of water may have developed. Likewise, some may have gone away. Additionally, he acknowledged at hearing, Parcel 7011-21-300-003 appears to have bodies of water which are not accounted for in the assessment process.

McCrea testified that all the agriculturally classed property in Muscatine County was assessed based on productivity and net earning capacity. It is the Board of Review’s position that there is no authority to further adjust agricultural land. However, McCrea testified that he knows he, and the Board of Review, have the ability to adjust agricultural parcels. We note the assessor is not prohibited from, and is in fact permitted to, apply their own adjustments based upon factors which may not have

been appropriately considered in the CSR rating system. IOWA DEP'T OF REVENUE, IOWA REAL PROPERTY APPRAISAL MANUAL 2-26 (2008).

McCrea stated it would be unfair to adjust only the Pike Run properties, based either upon an inspection, viewing of photos, or other means of verification, and not providing similar contingencies to all properties in Muscatine County. On the other hand, he did acknowledge this is precisely what the Board of Review does when it grants relief to residential, commercial, or industrial classed properties that petition for relief.

Pike Run came to the hearing prepared and presented what it believed to be errors in the property record cards. We do not find an error is clearly proven on either parcel numbers 7011-29-400-006 or 7011-28-100-010. However, aerial photos with soil-type overlays, and testimony from both parties, clearly identifies several areas of water on the parcel for Parcel 7011-21-300-003, which were not accounted for on the property record card.

Thumann physically measured the areas of water for Parcel 7011-21-300-003 and no testimony was presented to dispute the accuracy of his measurements. Because assessors and boards of review are allowed to apply adjustments based upon other factors, which may not have been appropriately considered, or to correct known errors, we believe adjustments for the bodies of water identified on Parcel 7011-21-300-003 is supported. The adjustments would be based upon the 9.78 acres of area identified by Thumann and presented in the calculations and aerial map offered on Exhibit 16. This identified area would receive a soil-type of W (Water), which the Muscatine County Board of Review indicates as having a 0 CSR. We are unclear as to how a CSR rating of 0 was established. According to the IOWA DEPARTMENT OF REVENUE, IOWA REAL PROPERTY APPRAISAL MANUAL 2-26 (2008), "corn suitability ratings range from 5 to 100." Therefore, while we recognize Parcel 7011-21-300-003 has some water areas which are not accounted for, we are reluctant to apply a CSR which is less than that dictated by the Department of Revenue. We believe that the water areas identified by Thumman

should carry the minimal CSR of 5. The addition of a 5 CSR for some portions of this parcel would replace other identified soil types/CSR ratings. Thumann identifies five separately measured sections of this parcel in his calculations, arriving at a total water area of 9.78 acres. One portion is identified as “Pike Creek” and contains 4.41 acres. On the aerial map with soil type overlay, this entire area of 4.41 acres is identified as a 315 soil type with a CSR rating of 20. The remaining 5.37 acres outlined by Thumann is almost entirely located within an area identified as a 961 soil type with a CSR rating of 47.

Based upon the evidence as a whole, it is our opinion Pike Run has provided sufficient evidence to indicate an error, supporting a reduction to Parcel 7011-21-300-003. The Appeal Board finds 9.78 acres, identified as bodies of water should be re-calculated with a soil-type of W which carries a 5 CSR rating. The 9.78 acres of 5 CSR rating would replace 4.41 acres of a 315 soil type/CSR rating 20; and 5.37 acres of 961 soil type/CSR rating 47. The overall productivity rating of this entire parcel would then be recalculated.

The Appeal Board finds there is insufficient evidence to support the claim that there are errors on the parcels associated with parcel numbers 7011-29-400-006 or 7011-28-100-010.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or

additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Section 441.37(1)(d) is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(d), on which the appellant rests his claim, allows a protest on the ground “[t]hat there is an error in the assessment.” § 441.21(1)(d). The administrative rule interpreting this section indicates that the error may be more than what is alleged by the Board of Review. While “[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment.” Iowa Administrative r. 701-71.20(4)(b)(4) (emphasis added). This language suggests that other errors may constitute grounds for appeal pursuant to section 441.37(1)(d).

Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. Pike Run’s parcels all carry an agricultural classification, which requires that they are valued using the agricultural formula method. *See* Iowa Admin. Code r. 701-71.3, 701-71.12.

Even though valuing agricultural land requires use of the formula, assessors and boards of review are allowed to apply adjustments based upon other factors which may not have been appropriately considered with the CSR rating. IOWA DEP'T OF REVENUE, IOWA REAL PROPERTY APPRAISAL MANUAL 2-26 (2008). Evidence shows that one of Pike Run's three parcels has significant areas of water that were not reported and therefore not properly adjusted.

Because we find Parcel 7011-21-300-003 has an error, we must set a new value, based on the fact that no adjustments were made for the bodies of water. We believe Thumann's calculations of the areas of water are reasonable, consistent with the aerial maps presented, and reliable. We, therefore, remand this issue to the Muscatine County Board of Review to modify the soil types in Parcel 7011-21-300-003 as follows: adding 9.78 acres of a W soil type with the lowest CSR rating of 5 and removing 4.41 acres of a 315 soil type/CSR rating 20; and 5.37 acres of 961 soil type/CSR rating 47. *See Iowa Code § 421.1A(4)(c)* (permitting this Board to "grant other relief . . . orders, or directives that the board deems necessary or appropriate in the processes of disposing of a matter").

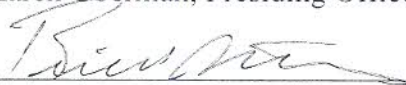
We find insufficient evidence has been presented to support the claim that parcel numbers 7011-29-400-006 or 7011-28-100-010 have errors in the assessments. We, therefore, affirm those assessments of parcel numbers 7011-29-400-006 or 7011-28-100-010, as determined by the Muscatine County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the January 1, 2009, assessment of Pike Run Sportsmen's LTD's agriculturally classified parcels 7011-29-400-006 and 7011-28-100-010 are affirmed. Additionally, the Appeal Board orders the assessment of Pike Run Sportsmen's LTD's agriculturally classified parcel 7011-21-300-003 shall be modified by the Board of Review to represent an addition of 9.78 acres of soil type W with the lowest CSR rating of 5, and a reduction of 4.41 acres of a 315 soil type/CSR rating 20; and 5.37 acres of 961 soil type/CSR rating 47. The Board of Review shall send this modified value to this Board and the Muscatine County Auditor within thirty days of the date of this order. Upon receipt of the value from the Board of Review, all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

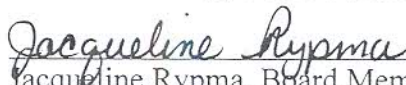
Dated this 19 day of AUGUST 2010,



Karen Oberman, Presiding Officer



Richard Stradley, Board Member



Jacqueline Rypma, Board Member

Cc:

Pike Run Sportmen's LTD
Larry H. Thumann, Sr.
10988 148th Street
Davenport, Iowa 52804
APPELLANT

Dana E. Christiansen
420 E 3rd St
Muscatine, Iowa 52245
ATTORNEY FOR APPELLEE

Leslie Soule
401 East 3rd Street
Muscatine, IA 52761
AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9.19</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	